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APPEAL STAFF REPORT SUBSTANTIAL ISSUE DETERMINATION

Appeal number **A-3-SLO-04-048**

Applicant Gregg Allen Berge

Appellant Gregg Allen Berge

Local government San Luis Obispo County (S030125C, C03-0388)

Local decision Approval of Conditional Certificate of Compliance C2003-0388 (Board of Supervisors Resolution 2004-206, adopted June 22, 2004).

Project location 2255 Adams Street, Cambria (Lots 19, 20 and a portion of 21 of Block 128, Cambria Pines Manor Unit 6)

Project description The appellant applied for a grant of variance and/or modification to Conditional Certificate of Compliance (CCOC) No. C1989-007. In acting on the application, the County modified the conditions of CCOC C1989-007 by granting a new CCOC (No. C2003-0388).

File documents San Luis Obispo County Certified Local Coastal Program; Final Local Action Notice 3-SLO-04-232; San Luis Obispo County Department of Planning and Building Staff Report for Subdivision Review Board Hearing of May 3, 2004; San Luis Obispo County Department of Planning and Building Staff Report for Board of Supervisors Hearing on June 22, 2004; San Luis Obispo County Department of Planning and Building Project Referral of March 8, 2004; Periodic Review of the San Luis Obispo County Local Coastal Program adopted by the Coastal Commission on July 12, 2001; Revised Findings for the Commission's January 15, 1998 action on the North Coast Area Plan Update; correspondence to and from applicant.

Staff recommendation ... No Substantial Issue



California Coastal Commission
October 14, 2004 Meeting in San Diego

Staff: SM Approved by:

Summary of Staff Recommendation:

The appealed development is the issuance of a Conditional Certificate of Compliance (CCOC) for three lots in Cambria, San Luis Obispo County (Location and parcel maps attached as Exhibit 1). In general, the certificate of compliance process established by the Subdivision Map Act is used to validate the legal status of land divisions. Where land has been divided in a manner that violated the subdivision requirements in effect at that time, the issuance of a certificate of compliance is a discretionary action that must be conditioned to resolve the violation. Because the issuance of a CCOC is a discretionary action to approve development in the form of a land division, the San Luis Obispo County certified Local Coastal Program (LCP) appropriately recognizes that approval of a CCOC constitutes approval of a coastal development permit¹. Thus, the action of granting the CCOC must be consistent with the LCP.

In 1989, San Luis Obispo issued a CCOC in 1989 for the 3 lots that are the subject of this appeal. This CCOC was not appealed by the Commission and effectively legalized the subject parcel. Development of the parcel was subject to the satisfaction of the conditions attached to the 1989 CCOC, which requires that evidence of community water and sewer service be obtained prior to the issuance of building permit(s). The current owner of the lots has been unable to satisfy these conditions, and after numerous requests for the County and Commission staff to intervene on his behalf, applied for a variance to these requirements in 2003. He has also requested a determination that the parcel is in substantial conformance with the conditions attached to the 1989 CCOC, so he can apply for a building permit. San Luis Obispo County processed these requests as an application to amend the 1989 CCOC, and, on June 22, 2004, approved a new CCOC to replace and supersede the 1989 CCOC. The new CCOC retains similar conditions to the 1989 CCOC, that require water and sewer service to be obtained from the community services district, and that a commitment from the district to provide such services be obtained prior to the application for a building permit.

The appellant contends that these conditions are inconsistent with the LCP provisions requiring new development to demonstrate the availability of adequate public services. The appeal argues that such services *are* available, despite the fact that the Cambria Community Services District has identified that the property is not currently eligible to receive water or sewer service. The appellant's position contradicts the findings adopted by the Commission regarding Cambria's limited water supply, calling for the avoidance of additional withdrawals from Santa Rosa and San Simeon Creeks until the coastal resource impacts of such extractions are effectively addressed.² The appeal does not provide any new information, or a reasonable LCP basis, to justify approval of the requested variance or adjustment to the regulations requiring evidence of water and sewer service, which are essential to the protection of riparian habitats, wetlands, coastal agriculture, and priority uses.

¹ Section 21.01.010 of the San Luis Obispo County Real property Division Ordinance

² e.g., findings regarding the North Coast Area Plan Update proposed by San Luis Obispo County in 1989 and findings contained in the Commission's Periodic Review of the San Luis Obispo County LCP



Rather, the concern raised by the appeal, although of no benefit to the appellant/applicant, is that the County appears to have approved a land division despite the fact that sustainable sources of water and wastewater treatment are *not* available. The LCP requires adequate sources of water and sewer to be demonstrated *prior to approval* of land divisions, not as a condition of approval. This case, however, differs from typical land divisions, in that the subject parcel was legalized in 1989 by the first CCOC. The County has simply re-issued a CCOC, containing essentially the same requirements for water and sewer as the CCOC that was issued in 1989 and remains in effect. Thus, the County's action does not change the level of potential development and water demand, and therefore does not raise a substantial issue regarding consistency with the public works standards of the LCP.

The appeal also asserts that the County improperly processed an application for a variance or adjustment to the terms of a 1989 CCOC as a new CCOC. This contention does not raise a substantial issue because the County appropriately processed the requested change as an amendment to the 1989 CCOC, which, in accordance with LCP procedures, triggers a new CCOC. Moreover, irrespective of the type of procedure used to evaluate the appellant's requests, the same conclusion is reached. That is, that the appellant's desire to be obtain clearance to apply for a building permit without a will serve letter from the local service district is neither within the Commission's jurisdiction, nor consistent with LCP standards for development.

The appeal also challenges the terms of the 1989 CCOC, among other ways, by questioning whether the appropriate standards were applied at the time it was issued. The timeframe for such challenges has long since passed. Contentions that the 1989 CCOC was improperly processed are not valid grounds for appeal, and do not raise a substantial issue regarding the County's action on the current application.

Finally, the appeal asserts that the County and CCSD ordinances and regulations being used to manage growth in Cambria represent a taking of his property, and violations of equal protection, due process, and the rules governing assessments. The appellant's broad challenges to the legality of the ordinances and regulations implemented by the County and the CCSD are beyond the scope of this review, which is limited to issues of LCP consistency. The appellant is one of over 300 Cambria vacant lot owners who have filed "Allocation to Build Requests" with the County since the 1990 closure of the CCSD waiting lists. There are currently 666 property owners desiring to build a single-family residence on the CCSD water waiting list. There are no unique circumstances, or any legal or justifiable basis, for the Commission to grant the applicant's request for special treatment. Therefore, the appeal does not raise a substantial issue regarding LCP compliance.



Staff Report Contents

Staff Report Contents.....	4
I. Appeal of San Luis Obispo County Decision.....	4
A. San Luis Obispo County Action	4
B. Appeal Procedures	4
C. Summary of Appellant's Contentions.....	5
II. Recommended Motion and Resolution	9
III. Recommended Findings and Declarations.....	9
A. Public Service Capacities	9
B. Coastal Development Permit Procedures	15
C. Takings and Equal Protection	24
D. Other Appeal Contentions	27

Exhibits

Exhibit 1: Location and Parcel Maps

Exhibit 2: SLO County Findings and Conditions of Approval

Exhibit 3: Contentions of Appeal

I. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

On October 24, 2003, the San Luis Obispo County received an application for a variance or adjustment to the terms of CCOC No. C1989-007. The County determined that the request to obtain an exemption from the terms of the CCOC could not be processed as a variance, and therefore processed the application as a request for a Modification or an Adjustment to the requirements of the recorded CCOC. The San Luis Obispo County Subdivision Review Board (SRB) acted on this request by approving a new CCOC (No.C2003-388) to replace CCOC C1989-007 on May 3, 2004. The applicant appealed that decision to the San Luis Obispo County Board of Supervisors, who denied the appeal and upheld the decision of the SRB on June 22, 2004. The locally adopted findings and conditions of approval for CCOC C2003-388 are attached to this report as Exhibit 2.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300



feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. In addition, Section 23.01.043 of the San Luis Obispo County certified LCP states that developments approved within Sensitive Resource Areas (SRAs), such as environmentally sensitive habitats designated by the LCP. This project is appealable because the CCOC is not a principally permitted use, and because the property that is the subject of the CCOC is located in an area mapped as terrestrial habitat (a type of SRA) designated by the LCP.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. The property that is the subject of the CCOC is not located between the first public road and the sea and thus, this additional finding does not need to be made in a de novo review of this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

C. Summary of Appellant’s Contentions

The 30-page appeal is attached to this report as Exhibit 3. In summary, the appellant contends:

1. The County’s approval of a CCOC without water or sewer service is a violation of the Health And Safety Code, Subdivision Map Act, LCP, and Code of Regulations of the State of California.
2. Conditions 1 and 2 are inconsistent with the LCP, SLO General Plan, and state regulations because they implement ordinances that came into effect after the first condition date of Conditional certificate of Compliance C1989-007.
3. Condition 2 cannot be met because a construction building permit allocation can never be issued by the County pursuant to Title 26 of the county code.
4. The County’s decision does not assure sustainable new development as required by Public Works Policy 1, Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.030, and Section 21.03.010 of Title 21



5. The application was for a grant of variance to the conditions imposed the CCOC issued in 1989, not for a new CCOC.
6. In approving the CCOC in 1989, the County determined that there is adequate water and sewer capacities to serve the parcels.
7. Lots 19 and 20 were not a part of the violation that triggers the need for a conditional COC, which involved deeding a five-foot strip of the southerly boundary of Lot 21 to the owner of Lot 22 in 1963.
8. The requirements of the new CCOC, requiring the applicant to obtain water and sewer service from the CCSD, are more onerous than the terms of the 1989 CCOC, which, prior to the adoption of Title 26 by the County, could have been met by applying for placement on the allocation wait lists.
9. Condition 1 and 2 are unreasonable and are not feasible pursuant to Pursuant to Public Resources Code Section 30108, 30010, and 30607, because the applicant is unable to obtain a water connection or an intent to serve letter.
10. The CCSD's determination that the property is not eligible for water has taken away the applicant's development rights. By not being able to obtain water or sewer service from the district, the applicant is unable to apply for building permits and land use permits by the LCP. The property is required by the LCP, CCSD regulations, the County Health and Safety Code, and Section 713 of Title 24 of the California Code of Regulations to obtain water and sewer service from the CCSD.
11. The County Health Officer stated that he would not have approved the conditions pursuant to Section 21.03.010 if he had seen the CCSD's response to the project referral.
12. The CCSD was required to adopt Ordinance 14-90 to comply with County Ordinance 2477, which implements Title 26 (Growth Management Ordinance). Contrary to the County and the Commission's positions that Title 26 is not a part of the LCP, Title 26 is imbedded within the LCP because new development must comply with its requirements, and because Title 23 (Coastal Zone Land Use Ordinance) and Title 19 (Building and Construction), are included by reference as part of Title 26.
13. The County finding that there is no authority to request a variance from Title 26, because Title 26 is not a part of the Coastal Zone Land Use Ordinance is false and self-serving. The applicant requested a variance to the conditions of CCOC C1989-007, and a determination by the County of substantial conformance with the CCOC pursuant to Section 21.04.040, based upon his inability and hardship in obtaining the will serve letters required pursuant to Section 23.04.430 of the CZLUO. The request for a variance was fraudulently altered by the County, without the appellant's consent, to an application for a new certificate of compliance. The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the applicant from meeting the threshold to seek a taking of private property in court.
14. The County has failed to respond to issues raised by the appellant regarding the legality of Title 26.



Title 26 establishes the process for allotting construction permits, and, as applied to Cambria, requires such allocations to be issued in accordance with the provisions of CCSD's wait list, which is frozen by the terms of Title 26. The provisions of Title 26 constitutes a building restriction for any property not on the CCSD's wait list, and therefore is a violation of the Equal Protection provision of the Constitution of the State of California. It is the opportunity to build a project that is precluded and debarred by Section 26.01.070 of title 26 and Section 8.04/070 of the CSD compliance ordinance to SLO County Ordinance No. 2477.

15. The State Division of Water Rights would not approve of the selling of wait list positions, and the transferring of water from other parcels, because the water permit for the CCSD is only an appropriative right to pump water owned by the State
16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.
17. The provisions of CCSD ordinance 8.04.080 closed the waiting list for residential development in 1990. This violates the due process provision for district members who are precluded from the water and sewer allocation list. The provisions of this ordinance do not provide any basis for future access to the waiting list for residential development. As such, the CSD ordinance eliminates all future development of appellants property. This is a taking of private property by the government pursuant to a building restriction that is definite, punitive, and goes too far by overregulation. It is also a breach of benefit unit assessment contracts.
18. The applicant's request for a determination of substantial conformance with the 1989 CCOC is supported by the findings of the SRB's approval and the Board of Supervisor's consent, which established that there were adequate water and sewer capacities available to serve the property, as required by Public Works Policy 1. The appellant has provided proof that there are sewer and water mains fronting and abutting the site.
19. The installation and upgrade of water and sewer pipelines was paid for by the proceeds of Cambria Assessment Districts 01 and 02 funded by the Municipal Bond Act of 1913 and 1915 pursuant to the Streets and Highway Code of the State of California. District members within the boundaries of the original assessment districts have grandfathered rights to water and sewer pursuant to Resolution 76-753 of the Board of Supervisors and Resolution 76-8 of the Local Agency Formation Commission.
20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order the County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.
21. The limitations on water withdrawals established by coastal development permits issued to the CCSD by the Coastal Commission, and the restrictions on future development established by the LCP to address concerns regarding the adequacy of local water supplies, are inconsistent with the



State of California Health and Safety Code requirements that public works facilities be designed to accommodate the existing project plan and buildout of the service area.

22. It is the fault of the County that the water and sewer system was designed poorly and cannot serve the areas eligible for urban services.
23. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average.
24. The CCSD has not completed the three performance standards regarding further water withdrawals from Santa Rosa and San Simeon Creeks established by the suggested modifications to the North Coast Update adopted by the Commission in 1998, which were never accepted by the County.
25. The Periodic Review adopted by the Coastal Commission in 2001 states that substantial progress has been made by the County and the CCSD on achieving implementation of a buildout reduction plan for Cambria. Given the fact that the lot reduction plan continues to be discussed, the appellant believes that the CCC was referring to Title 26 (San Luis Obispo County's Growth Management Ordinance) and CCSD Ordinance 8.04.070 (which closed the CCSD's water and sewer waiting lists), when it adopted this statement. These are punitive measures that place a disparate impact of the restriction, allocates unequally the benefits and burdens of people of same rights, and provides a substantial impairment of existing contracts by modifying one parties contractual rights to the benefit of another within the same class or standing.
26. By declaring a water emergency under State Water Code Section 354, the CCSD must make immediate strides to eliminate the emergency, which would include solving the water shortage emergency for the complete urban services line/urban reserve line, and not just those who are on CCSD wait list.
27. The CCSD has not exceeded the threshold for an emergency because they have not been close to extracting the maximum amount of water that are allowed to withdraw from Santa Rosa and San Simeon Creeks.
28. The CCSD has not accounted for the additional water supplies it has obtained as a result of settlement agreements and water diversions related to MTBE contamination in Santa Rosa Creek.
29. The County refuses to certify the Level of Severity as required by the LCP and the Resource Management System (RMS). San Luis Obispo County has never implemented the requires steps and conditions for a Level of Services of 2 or 3 pursuant to the LCP's Resource Management System.
30. The only purpose for Title 26 was to implement general provisions for the issuance of construction permit allocations and construction permits based on the provisions of Growth Management Ordinance No. 2477.
31. The County's action is a taking by regulation.



II. Recommended Motion and Resolution

MOTION: I move that the Commission determine that Appeal No. A-3-SLO-04-048 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a YES vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-SLO-04-048 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Recommended Findings and Declarations

Note: numbers of appeal contentions correspond to numbering in Section I.C of this report (Summary of Appellant's Contentions).

A. Public Service Capacities

1. Appellant's Contentions

The following contentions assert that the County's action is inconsistent with LCP requirements relevant to the provision of public services for new development:

1. The County's approval of a CCOC without water or sewer service is a violation of the Health And Safety Code, Subdivision Map Act, LCP, and Code of Regulations of the State of California.
4. The County's decision does not assure sustainable new development as required by Public Works Policy 1, Coastal Zone Land Use Ordinance (CZLUO) Section 23.04.430, and Section 21.03.010 of Title 21.
6. In approving the CCOC in 1989, the County determined that there adequate water and sewer capacities to serve the parcels.
18. The applicant's request for a determination of substantial conformance with the 1989 CCOC is supported by the findings of the SRB's approval and the Board of Supervisor's consent, which



established that there were adequate water and sewer capacities available to serve the property, as required by Public Works Policy 1. The appellant has provided proof that there are sewer and water mains fronting and abutting the site.

19. The installation and upgrade of water and sewer pipelines was paid for by the proceeds of Cambria Assessment Districts 01 and 02 funded by the Municipal Bond Act of 1913 and 1915 pursuant to the Streets and Highway Code of the State of California. District members within the boundaries of the original assessment districts have grandfathered rights to water and sewer pursuant to Resolution 76-753 of the Board of Supervisors and Resolution 76-8 of the Local Agency Formation Commission.
20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order to County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.
23. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average.
26. By declaring a water emergency under State Water Code Section 354, the CCSD must make immediate strides to eliminate the emergency, which would include solving the water shortage emergency for the complete urban services line/urban reserve line, and not just those who are on CCSD wait list.
27. The CCSD has not exceeded the threshold for an emergency because they have not been close to extracting the maximum amount of water that are allowed to withdraw from Santa Rosa and San Simeon Creeks.
28. The CCSD has not accounted for the additional water supplies it has obtained as a result of settlement agreements and water diversions related to MTBE contamination in Santa Rosa Creek.
29. The County refuses to certify the Level of Severity as required by the LCP and the Resource Management System (RMS). San Luis Obispo County has never implemented the required steps and conditions for a Level of Services of 2 or 3 pursuant to the LCP's Resource Management System.



2. Applicable Policies

Public Works Policy 1 states:

New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable. Permitted development outside the urban services line shall be allowed only if it can be served by adequate private on-site water and waste disposal systems.

The applicant shall assume responsibility in accordance with county ordinances or the rules and regulations of the applicable service district or other providers of services for costs of service extensions or improvements that are required as a result of the project. Lack of proper arrangements for guaranteeing service is grounds for denial of the project or reduction of the density that could otherwise be approved consistent with available resources. [THIS POLICY SHALL BE IMPLEMENTED PURSUANT TO SECTION 23.04.021C OF THE CZLUO.]

Section 23.04.021C of the CZLUO states:

Overriding land division requirements. All applications for land division within the Coastal Zone (except condominium conversion) shall satisfy the following requirements, as applicable, in addition to all applicable provisions of Sections 23.04.024 through 23.04.036. In the event of any conflict between the provisions of this section and those of Sections 23.04.024 through 23.04.036, this section shall prevail.

- (1) Water and sewer capacities - urban areas: In communities with limited water or sewage disposal service capacity as defined by Resource Management System alert level II or III:
 - (i) Within an urban services line, new land divisions shall not be approved unless the approval body first finds that sufficient water and sewage disposal capacities are available to accommodate both existing development and development that would be allowed on presently vacant parcels.

...

Section 23.04.430 of the CZLUO states:

A land use permit for new development that requires water or disposal of sewage shall not be approved unless the applicable approval body determines that there is adequate



water and sewage disposal capacity available to serve the proposed development, as provided by this section. Subsections a. and b. of this section give priority to infilling development within the urban service line over development proposed between the USL and URL. In communities with limited water and sewage disposal service capacities as defined by Resource Management System alert levels II or III:

a. A land use permit for development to be located between an urban services line and urban reserve line shall not be approved unless the approval body first finds that the capacities of available water supply and sewage disposal services are sufficient to accommodate both existing development, and allowed development on presently vacant parcels within the urban services line.

b. Development outside the urban services line shall be approved only if it can be served by adequate on site water and sewage disposal systems, except that development of a single family dwelling on an existing parcel may connect to a community water system if such service exists adjacent to the subject parcel and lateral connection can be accomplished without trunk line extension.

Section 21. 03.010 states:

The planning commission and the subdivision review board, as the advisory agency, shall not approve a tentative tract map or tentative parcel map unless it determines that all of the following criteria are satisfied:

3. Analysis

Appeal contentions 1, and 4 assert that the County's approval of the CCOC violates the requirements of LCP, including Public Works Policy 1 and Implementing Ordinances 23.04.030 and 21.030.010, by approving a land division without water and sewer services. Other contentions indicate that the appellant believes public services *are* available and must be provided. The appeal therefore appears to argue that the certificate of compliance should not be conditioned to require evidence that the community services district will provide water and sewer service. Indeed, as discussed later in the analysis of the appellant's procedural contentions, the appellant has requested that the Commission take action to eliminate this step, and instead instruct the CCSD to issue an intent to serve letter (see Contention 20 in summary, paragraph 4, page 12 of appeal).

In support of the position that water and sewer services are and must be made available, the appeal alleges:

a. The County previously determined that public services are available when it issued a CCOC for the three lots in 1989. (Contentions 6 and 18.)

Response: This argument does not account for the fact that the conditions of the 1989 CCOC that requires evidence of public service availability before building permits can be issued. In contrast to the



appellant's assertions, these conditions indicate that the County could **not** determine that adequate public services were available in 1989, and therefore conditioned the CCOC to ensure that this issue would be addressed prior to residential development.

The re-issuance of a similarly conditioned CCOC does not raise a substantial issue regarding public service availability because the development potential of the property remains the same; no residential development may occur until the availability of public services can be documented. This approach is consistent with the intent of Public Works Policy 1.

b. The availability of public services is demonstrated by the presence of water and sewer mains fronting the property. (Contention 18.)

Response: The presence of a pipeline does not equate to the availability of water

c. Public services must be made available because the property has been assessed to receive such services. (Contention 19.)

Response: Service District assessments do not have a direct bearing on the analysis of available public service capacities required by the LCP. The levying of an assessment by a service district does not obviate the need for new development to demonstrate that adequate services are available.

d. The wastewater treatment plant has been expanded by permit to 1.5 mpd drywater average, and can be expanded to 2.5 mpd drywater average. (Contention 23)

Response: While there may be wastewater treatment capacity to serve the appellant's property, it is clear that water service is not available, as discussed further below. The potential availability of one needed public service does not imply that all needed services are available.

e. The CCSD's declaration of a water emergency necessitates that immediate steps be taken to address the water shortage. (Contention 26)

Response: The CCSD's responsibilities to resolve the declared emergency pursuant to the water code are beyond the scope of this appeal. To the degree this contention implies that the emergency declaration will result in an imminent solution to the water shortage, it is inappropriate to rely on unknown future actions as an effective means of compliance with Public Works Policy 1.

f. The CCSD has inappropriately declared a water emergency because data from the State Water Board indicate that the CCSD is not withdrawing the amount of water the State Water Board allows. (Contention 27)

Response: The fact that the CCSD is not withdrawing the maximum amount of water allowed by the State Water Board does not invalidate the CCSD's declaration of a water emergency or effectively demonstrate the availability of a sustainable water supply. The Commission has previously found that withdrawing the maximum amount of water allowed by these allocations poses significant adverse



impacts to the environmentally sensitive habitats supported by Santa Rosa and San Simeon Creeks.³

g. Additional sources of water have been obtained in response to MTBE contamination. (Contention 28.)

Response: No evidence has been provided to demonstrate that the methods used to resolve MTBE contamination issues in Santa Rosa creek have provided a sustainable source of water for new development. The objective of these is efforts to protect existing water supplies, not to identify a source of water for new development.

h. The County has not certified a Level of Severity of 2 or 3 pursuant to the LCP resource Management System (RMS). (Contention 29.)

Response: As detailed by the Coastal Commission's 2001 Periodic Review of the SLO LCP, the RMS evaluations for Cambria completed by the County have failed to provide an effective means of addressing the areas critical water supply issue. The fact that there has been disagreement regarding the severity of the water supply situation in Cambria does not provide the evidence of adequate public services required by Public Works Policy 1.

Overall, the appellant's position that water is available directly conflicts with the many analyses conducted by this Commission. The Commission has consistently expressed serious concern about the impacts of withdrawals from Santa Rosa and San Simeon Creeks. As discussed in the Commission's actions on appeals (e.g., single family residences and subdivisions), LCP amendments (e.g., 1998 North Coastal Area Plan Update), and LCP Implementation Reviews (i.e., 2001 Periodic Review), it is the position of the Commission that new development that places additional demands on the water supply should not be approved until the coastal resource impacts of existing extractions are effectively addressed. The appeal does not provide any new information, or a reasonable LCP basis, to justify approval of the requested variance or adjustment to the regulations requiring evidence of water and sewer service, which are essential to the protection of riparian habitats, wetlands, coastal agriculture, and priority uses

With respect to the appeal's references to LCP Implementing Ordinances 23.04.030 and 21.030.010, it is noted that these sections of the LCP apply the issuance of a land use permit (Section 23.04.430) and approval of a tentative tract map or tentative parcel map (Sections 21.03.010). Such actions are distinct from County actions on a CCOC. Public Works Policy 1 and CZLUO Section 23.04.021C are the LCP standards for water and sewer service most directly applicable to the issuance of CCOC's. These requirements have been appropriately addressed by the terms of the County's approval, given the fact that, as conditioned, the CCOC does not increase potential development densities or demands for public services.

³ E.g., findings regarding the North Coast Area Plan Update proposed by San Luis Obispo County in 1989 and findings contained in the Commission's Periodic Review of the San Luis Obispo County LCP



4. Conclusion

In contrast to the appellant's position that public services are available, the Commission has consistently expressed concern that the water demand in Cambria exceeds the levels of withdrawals that can be sustained without damage to the riparian resources of Santa Rosa and San Simeon creeks. The appellant is essentially seeking an exemption to the regulatory standards that have been carefully crafted by the CCSD, the County, and the Commission to protect the health and safety of the area's water supply and natural resources, with which all development must comply.

The issue of concern indirectly raised by the appeal is that the County has approved a land division despite the fact that sustainable sources of water and wastewater treatment are **not** available. In this case, the County has approved a **revised** CCOC (as opposed to a new land division) that contains essentially the same requirements for water and sewer as the CCOC issued in 1989. The 1989 CCOC was not challenged and legitimized the parcel at that time. Thus, the County's action does not result in a change in potential development densities or affect levels of water and sewer service demand. As a result, the revised CCOC does not raise a substantial issue regarding consistency with the public works standards of the LCP cited by the appeal.

B. Coastal Development Permit Procedures

1. Appellant's Contentions

The appeal contends that the County has improperly processed both the 1989 CCOC, as well as the appellant's application, as follows:

2. Conditions 1 and 2 are inconsistent with the LCP, SLO General Plan, and state regulations because they implement ordinances that came into effect after the first condition date of Conditional certificate of Compliance C1989-007.

5. The application was for a grant of variance to the conditions imposed the CCOC issued in 1989, not for a new CCOC.

7. Lots 19 and 20 were not a part of the violation that triggers the need for a conditional CCOC, which involved deeding a five-foot strip of the southerly boundary of Lot 21 to the owner of Lot 22 in 1963.

13. The County finding that there is no authority to request a variance from Title 26, because Title 26 is not a part of the Coastal Zone Land Use Ordinance is false and self-serving. The applicant requested a variance to the conditions of CCOC C1989-007, and a determination by the County of substantial conformance with the CCOC pursuant to Section 21.04.040, based upon his inability and hardship in obtaining the will serve letters required pursuant to Section 23.04.430 of the CZLUO. The request for a variance was fraudulently altered by the County, without the appellant's consent, to an application for a new certificate of compliance. The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the applicant from meeting the



threshold to seek a taking of private property in court.

16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.

20. Appellant seeks the approval and determination from the Commission that CCOC 1989-007 is in substantial conformance with the provisions of Section 21.04.040, order to County to issue a certificate of compliance to the subject property, and instruct the CCSD to issue an intent to serve letter in order for the County to issue an authorization to file a construction permit.

2. Applicable Policies

Section 23.010.030e(2) of the CZLUO addresses the applicability of the CZLUO to permits approved prior to its effective date as follows:

Completion of existing uses: Nothing in the title shall require any change in the plans, construction or approved use of a building or structure for which a permit has been issued before the effective date of this title or any amendment to the Land Use Element/Local Coastal Plan or this title which changes allowable uses of land, land use permit requirements or other applicable provisions of this title, as follows:

(i) Coastal Development Permit. Where construction or establishment of the use has not been commenced or completed as of the effective date of this title, provided the coastal development permit required by the Coastal Act has been obtained or the proposed development was subject to a categorical exclusion or other exemption from the permit requirements of the Coastal Act.

(ii) Building Permit. Construction is commenced and substantial site work (Section 23.02.042) has been completed or the time period for construction of the proposed development has not yet expired pursuant to the terms of a valid county permit.

Procedures for interpreting the content or application of the CZLUO are contained in Section 23.01.041e, which states:

- e. Procedure for interpretation: If questions arise from persons or bodies charged with administering this title about its content or application, the Planning Commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretation. The resolution is to be forwarded to the Board of Supervisors, which is to consider the findings and interpretation of the Planning Commission and render a final decision and interpretation on the matter. Thereafter the interpretation of the Board of Supervisors shall prevail.

LCP provisions for obtaining adjustments to the regulations for land divisions is found in Section 21.03.020, which states:



- (a) In performing its responsibilities pursuant to this title, the planning commission and the subdivision review board may consider, and in cases where undue hardship would result from the application of the regulations established in this title, approve adjustments or conditional adjustments to these regulations.
- (b) Requests for adjustments to the standards set forth in Section 21.03.010 of this title shall be submitted in writing to the planning department at the time the applicant submits the application for land division. If the request is for an adjustment to the requirements of the standard improvement specifications and drawings or for required offers of dedication, the adjustment may be requested at the time the applicant submits the application for land division or may be requested after the tentative parcel or tract map has been approved but before recordation of the parcel or tract map. When the regulation from which the applicant is seeking relief is prescribed in Title 22 or Title 23 of this code, the applicant shall seek relief pursuant to that title.
- (c) Neither the planning commission nor the subdivision review board shall approve any adjustment request to the standards set forth in Section 21.03.010 of this title or for required offers of dedication unless it makes each of the following findings:
 - (1) That there special circumstances or conditions affecting the subdivision; and
 - (2) That the granting of the adjustment will not have a material adverse effect upon the health or safety of persons residing or working in the neighborhood of the subdivision; and
 - (3) That the granting of the adjustment will not be materially detrimental to the public welfare or injurious to other property or improvements in the neighborhood of the subdivision.
- (d) If the request is for an adjustment to the requirements of the standard improvement specifications and drawings, neither the planning commission nor the subdivision review board shall approve the adjustment unless it makes each of the following findings:
 - (1) That there are special circumstances or conditions affecting the property being subdivided; and
 - (2) That the granting of the adjustment will not be detrimental to the traffic circulation system, the public utility and storm drainage systems, or vehicular or pedestrian safety; and
 - (3) That the granting of the adjustment will not result in any unreasonable costs in the maintenance of the improvement by the entity charged with such maintenance responsibility; and



- (4) That the granting of the adjustment will not be detrimental to, nor degrade, any portion of the improvement work involved in the subdivision.

Section 21.04.040 addresses the relationship between land division review procedures and building and land use permits as follows:

21.04.040 - Building and land use permits.

- (a) Compliance with this title is a condition precedent to the issuance of a building permit or land use permit by any person authorized to issue such permits in the unincorporated territory of the county.
- (b) This title shall be deemed complied with if the parcel map or tract map is in substantial compliance with the conditions of approval of the tentative parcel map or tentative tract map approved by the subdivision review board or planning commission and the parcel map or tract map satisfies the requirements of Section 21.03.010 of this title.

The following rules regarding the use of variances are established by Section 23.01.045 of the CZLUO:

A variance from the strict application of the requirements of this title may be requested as provided by this section. For the purposes of this title, a variance is a land use permit.

- a. Limitations on the use of a variance. A variance shall not be used to:
 - (1) Reduce the minimum parcel size required for a new land division by Chapters 23.04 or 23.08 of this title below the range of parcel sizes specified by Chapter 6, Part I of the Land Use Element for the land use category in which the subject site is located; or
 - (2) Authorize land uses other than those normally identified as allowable in a particular land use category by Coastal Table O, Part I of the Land Use Element, planning area standards of the Land Use Element, Chapter 22.08 or other chapter of this title, pursuant to Government Code Section 65906.
- b. Application: A written application for variance shall be filed with the Planning Department on the form provided, accompanied by all graphic information required for Plot Plans by Section 23.02.030b (Plot Plan Content), and any additional information necessary to explain the request. Acceptance of the application is subject to Section 23.01.033a (Consistency with the Land Use Element Required), and 23.02.022 (Determination of Completeness).
- c. Notice and hearing. After acceptance of a variance application and completion of a staff report, the Planning Commission will conduct a public hearing on the variance request. The notice and scheduling of the hearing shall be pursuant to Section



23.01.060 (Public Hearing).

- d. Action on a variance. The Planning Commission shall approve, approve subject to conditions, or disapprove a variance as set forth in this subsection. Such decision may be appealed to the Board of Supervisors as set forth in Section 23.01.042 (Appeal).
- (1) Findings. Approval or conditional approval may be granted only when the Planning Commission first determines that the variance satisfies the criteria set forth in Government Code Section 65906 by finding that:
- (i) The variance authorized does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and land use category in which such property is situation; and
 - (ii) There are special circumstances applicable to the property, related only to size, shape, topography, location, or surroundings, and because of these circumstances, the strict application of this title would deprive the property of privileges enjoyed by other property in the vicinity that is in the same land use category; and
 - (iii) The variance does not authorize a use that is not otherwise authorized in the land use category; and
 - (iv) The variance is consistent with the provisions of the Local Coastal Program; and
 - (v) The granting of such application does not, under the circumstances and conditions applied in the particular case, adversely affect public health or safety, is not materially detrimental to the public welfare, nor injurious to nearby property or improvements.
- (2) Conditions of approval. In approving an application for variance, such conditions shall be adopted as are deemed necessary to enable making the findings set forth in Section 23.01.045d(1).
- (3) Notice of Final Action. Where the variance request is appealable to the Coastal Commission pursuant to Section 23.01.043, a Notice of Final Action on the variance shall be provided as set forth in Section 23.02.036d.
- e. Effective date of variance. Except where otherwise provided by Section 23.01.043c for projects that may be appealed to the Coastal Commission, an approved variance shall become effective for the purposes of construction permit issuance or establishment of a non structural use, on the 15th day after the act of Planning Commission approval; unless an appeal to the Board of Supervisors is filed as set



forth in Section 23.01.042.

- f. Time limits and extensions. An approved variance is subject to the time limits, extension criteria and other provisions of Sections 23.02.040 through 23.02.052 of this title.

Section 21.02.020 of the LCP establishes the following rules for processing certificates of compliance:

21.02.020 - Certificates of compliance and conditional certificates of compliance. Certificates of compliance and conditional certificates of compliance are issued under the provisions of Government Code section 66499.35. A certificate of compliance application is filed to request the county to determine as a matter of record whether the real property which is the subject of the application is a legally created parcel which complies with the provisions of the Subdivision Map Act and this title. If the county determines that the parcel of real property is not legally created in compliance with the provisions of the Subdivision Map Act and this title, it shall issue a certificate of compliance or a conditional certificate of compliance in accordance with the provisions of Government Code section 66499.35(b). If the applicant is the original subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would be applicable to a current division of the property. If the applicant is a subsequent purchaser from the subdivider of the subdivision which was not in compliance with the law, conditions may be imposed which would have been applicable at the time the applicant acquired his or her interest in the property.

When a certificate of compliance or a conditional certificate of compliance is requested, application preparation and processing shall include the following:

- (a) Application. Certificate of compliance and conditional certificate of compliance applications shall include four copies of a completed application form as required by the planning department in addition to the information listed in subsection (b) below.
- (b) Content. Except as otherwise provided, certificate of compliance and conditional certificate of compliance applications shall include all of the following:
 - (1) Chain of title. Provide legible copies of all deeds affecting the property beginning with the deed that described the property prior to its current configuration from that time to the present, unless the parcels were created through a recorded tract map, parcel map, or official map or unless waived by the planning director. A typed copy of all handwritten deeds shall be prepared by the applicant along with all copies of handwritten deeds and copies of earlier deeds in the chain of title or deeds describing adjacent property shall be submitted by the applicant if requested by the planning director. [Amended 1993, Ord. 2602]
 - (2) Preliminary title report. Two copies of a preliminary title report concerning the



- property, showing current property owners, and which is not more than six months old.
- (3) Other information. Any maps or other supporting documents to support and clarify when and how the parcel in question was created.
 - (4) Coastal zone. For conditional certificates of compliance within the coastal zone, include two copies of a list of names and addresses of all residents and property owners within one hundred feet of the exterior boundaries of property. The names and addresses shall be typed on gummed labels, and submitted to the planning department. [Added 1992, Ord 2582]
- (c) Review and approval. The planning director is delegated the authority to approve and issue certificates of compliance. The subdivision review board is delegated the authority to approve and issue conditional certificates of compliance. The decision of the planning director or subdivision review board shall be final unless appealed to the board of supervisors pursuant to Section 21.04.020 of this title. [Amended 1993, Ord. 2602]
- (1) Staff report. The planning department shall prepare a staff report for each application that includes the following:
 - (i) A description of the history of the creation of the parcel;
 - (ii) A reference to applicable state law and county ordinances and regulations; and
 - (iii) In the case of a conditional certificate of compliance, recommend appropriate conditions to be imposed.
 - (2) Notice and hearing. Except for notice to the applicant prior to action by the planning director, notice of hearing is not required to be given for certificates of compliance under Government Code section 66499.35(a) because the issuance of such certificates of compliance is ministerial. The planning director shall schedule applications for conditional certificates of compliance under Government Code section 66499.35(b) on the public hearing portion of the subdivision review board agenda. Notice of hearing shall be given pursuant to Section 21.04.010 for all conditional certificates of compliance under Government Code section 66499.35(b); provided, however, for conditional certificates of compliance for properties located within the coastal zone, notice and hearing requirements shall be as set forth in Sections 21.04.010 and 21.08.020 of this title. [Added 1992, Ord.2582; Amended 1993, Ord. 2602]
 - (3) Approvals within the coastal zone. For conditional certificates of compliance applications located within the coastal zone that are appealable to the coastal commission, approval shall not be final until either all appeal periods have



expired and no appeal has been filed, or the coastal commission has approved the application. [Added 1992, Ord.2582]

- (d) Recordation. After a decision to issue a certificate of compliance or conditional certificate of compliance becomes final, such certificate or conditional certificate shall be recorded in the office of the county recorder upon payment by the applicant of the required recording fee.

3. Analysis

The appellant contends that his application for a variance or adjustment has been improperly processed as a new CCOC (contentions 5 and 13). The appellant submitted a land use application form to the County requesting a “grant of variance or adjustment of Title 23.04.430 and Title 26.01.070” in order to “complete the certificate of compliance C89-007 as recorded 5/11/89”.⁴ Appellant asserts that the County revised the application to be a request for a new CCOC without his consent, and thereby denied him due process to a variance proceeding (contention 13).

The first step in identifying the procedures for processing a development application is to identify the type of development being proposed. In this case, the applicant is seeking relief from the conditions of a CCOC issued in 1989 through an exemption to regulations that prevent him from applying from building and land use permits without evidence that water and sewer services will be provided by the local service district. On page 8, paragraph 3 of the appeal, the appellant writes:

The administrative record of this application will reflect that appellant “did” file and “application” for Grant of Variance and/or Adjustment to CCOC C1989-007 based on an inability and undue hardship in obtaining the “will serve” letters as conditioned in the original certificate pursuant to Section 23.04.430 of Title 23.

It is the decision making body, as opposed to applicants, that determine the appropriate procedures for processing permit applications and development requests. CZLUO Section 23.01.041.e assigns the Board of Supervisors the responsibility of resolving differing interpretations of Title 23, including coastal development permit processing. In this case, the Board determined that a variance could not be used to modify a recorded CCOC pursuant to CZLUO Section 23.01.045. The Commission concurs with that determination. The appropriate time to request a variance is concurrently with a development application. Variance procedures are not intended to provide a method for revising previous actions on development applications, or for exempting development from the conditions previously established as part of such actions.

With regard to the request for an *adjustment*, the County found the property does not meet the requirements for such adjustments, established by Section 21.030.010 of the Real Property Division Ordinance. Specifically, the County concluded that there are no special circumstances or conditions affecting the parcel that warrant such an adjustment, and that the granting of an adjustment could have a

⁴ pages 6 and 8 of application submitted to San Luis Obispo County



material effect on the health and safety of the neighborhood and community.

Again, the Commission concurs with the County's determination. All owners of vacant property within the Cambria Urban Area must contend with the constraints to development that are attributable to a limited supply of water. There are 666 property owners desiring to build a single family residence that are on the CCSD's waiting list for water, and over 300 property owners on the County's allocation list. There are no unique circumstances applicable to the appellant's property that would warrant an adjustment to the process being implemented by the County and the CCSD in order to protect the area's water supply and natural resources. The granting of such an adjustment would set a precedent that threatens the public's safety as well as the health and productivity of environmentally sensitive habitats.

Contrary to the appellant's claim that the County "fraudulently altered" the application with the intention of denying him of due process, the record indicates that the County took steps to facilitate the processing of the appellant's requests and provide him with an opportunity for a public hearing. The County could have rejected the variance application, but instead applied appropriate discretion in categorizing the request so that it could be processed in accordance with established county procedures.

As described by the County's findings, the procedure for requesting a modification to the terms of a previously issued CCOC is to apply for a new CCOC. This refutes the appellant's allegation that the CCOC cannot be amended (Contention 16). No substantial issue is raised by the appellant's objection to the County's processing of his request application as a new CCOC rather than a variance or adjustment. Contentions 8 and 16 do not raise a substantial issue, because, as addressed in the preceding findings, the conditions of the new CCOC appropriately address existing public service constraints.

As an alternative to the variance and/or adjustment originally requested in the appellant's application to the County, the appellant now suggests that the Commission determine that CCOC C1989-007 is in substantial conformance with Section 21.04.040(b) (contentions 13 and 20). The substantial compliance procedures established by Section 21.04.040(b) are applicable to parcel maps and tentative tract maps only, not CCOC's. Even if the ordinance did apply, the appellant would not be eligible to receive such a determination, because he has been unable to document the availability of water, as required in the ordinance's reference to Section 21.03.010.

Finally, appeal contends that the 1989 CCOC was improperly processed. First, the appeal alleges that the ordinances applied to that review came into affect after the first condition date of Conditional Certificate of Compliance C1989-007 (Contention 2). Second, the appeal indicates that only a five-foot strip of one of the three was the subject of the violation that gave rise to the need for a conditional certificate (contention 7). The opportunity to challenge the 1989 certificate has long since expired, and such challenges do not provide valid grounds for appeal. As discussed above, the correct procedure for re-evaluating these issues is to apply for a new CCOC.

4. Conclusion

The County has appropriately processed the appellant's request for a variance or adjustment to the requirements established by a 1989 CCOC as an application for a new CCOC. There is no legal basis



for the Commission to grant the appellant's request for a variance, adjustment, or substantial conformance determination, nor would it be in the interest of coastal resources or the public's health and welfare to do so. Therefore, the appeal does not raise a substantial issue regarding the procedures used by the County to process the appellant's requests.

C. Takings and Equal Protection

1. Appellant's Contentions

The following contentions assert that the County's action violates the appellant's constitutional rights:

3. Condition 2 cannot be met because a construction building permit allocation can never be issued by the County pursuant to Title 26 of the county code.
9. Condition 1 and 2 are unreasonable and are not feasible pursuant to Pursuant to Public Resources Code Section 30108, 30010, and 30607, because the applicant is unable to obtain a water connection or an intent to serve letter.
10. The CCSD's determination that the property is not eligible for water has taken away the applicant's development rights. By not being able to obtain water or sewer service from the district, the applicant is unable to apply for building permits and land use permits by the LCP. The property is required by the LCP, CCSD regulations, the County Health and Safety Code, and Section 713 of Title 24 of the California Code of Regulations to obtain water and sewer service from the CCSD.
12. The CCSD was required to adopt Ordinance 14-90 to comply with County Ordinance 2477, which implements Title 26 (Growth Management Ordinance). Contrary to the County and the Commission's positions that Title 26 is not a part of the LCP, Title 26 is imbedded within the LCP because new development must comply with its requirements, and because Title 23 (Coastal Zone Land use Ordinance) and Title 19 (Building and Construction), are included by reference as part of Title 26.
13. ... The applicant has a right to seek a variance as administrative remedy. The County has circumvented this constitutional right in order to keep the applicant from meeting the threshold to seek a taking of private property in court.
14. ... The provisions of Title 26 constitutes a building restriction for any property not on the CCSD's wait list, and therefore is a violation of the Equal Protection provision of the Constitution of the State of California. It is the opportunity to build a project that is precluded and debarred by Section 26.01.070 of title 26 and Section 8.04/070 of the CSD compliance ordinance to SLO County Ordinance No. 2477.
16. The conditions of the 1989 CCOC cannot be amended because the CCOC was issued in 1989, and the Public Health Department will not accept an intent to serve letter from the CCSD to satisfy the original conditions.



17. The provisions of CCSD ordinance 8.04.080 closed the waiting list for residential development in 1990. This violates the due process provision for district members who are precluded from the water and sewer allocation list. The provisions of this ordinance do not provide any basis for future access to the waiting list for residential development. As such, the CSD ordinance eliminates all future development of appellants property. This is a taking of private property by the government pursuant to a building restriction that is definite, punitive, and goes to far by overregulation. It is also a breach of benefit unit assessment contracts.
25. The Periodic Review adopted by the Coastal Commission in 2001 states that substantial progress has been made by the County and the CCSD on achieving implementation of a buildout reduction plan for Cambria. Given the fact that the lot reduction plan continues to be discussed, the appellant believes that the CCC was referring to Title 26 (San Luis Obispo County's Growth Management Ordinance) and CCSD Ordinance 8.04.070 (which closed the CCSD's water and sewer waiting lists), when it adopted this statement. These are punitive measures that place a disparate impact of the restriction, allocates unequally the benefits and burdens of people of same rights, and provides a substantial impairment of existing contracts by modifying one parties contractual rights to the benefit of another within the same class or standing
30. The only purpose for Title 26 was to implement general provisions for the issuance of construction permit allocations and construction permits based on the provisions of Growth Management Ordinance No. 2477.
31. The County's action is a taking by regulation.

2. LCP Provisions

The LCP Framework for Planning identifies the following general goal of the LCP's Land Use Element:

14. Property Rights - Recognize and protect property rights by:
 - a. Seeking to maintain a balance between the rights of property owners and efforts to plan for the community.
 - b. Not taking property without just compensation.
 - c. Recognizing and protecting the rights of all property owners, individuals and groups to comment and participate in coastal planning and land use decisions.

3. Analysis

There appear to be two main components to the appellant's allegations regarding takings. First, the appellant implies that he has been placed in a "Catch-22" situation that prevents him from making use of his property (contentions 3, 9, and 16). Second, appellant claims that the ordinances implemented by the County and the CCSD, and the County's action of his application, constitute takings by regulation



(contentions 10, 12, 13, 17, and 31).

The appellant's opinion that he will never be able to satisfy the terms of the CCOC requiring evidence of water and water service from the local service provides the basis of his "Catch-22" takings argument. The Commission acknowledges that LCP standards (i.e., Public Works Policy 1 and CZLUO Section 23.04.021C) prohibit residential development until such services are identified, but disagrees that these conditions constitute a takings of private property. Rather, they recognize the natural constraints to development that must be addressed in order to protect the public's health and welfare. The absence of a sustainable source of water is not caused by regulation. If and when additional sources of water can be identified, obtained, approved, and funded (e.g., via the CCSD's on-going pursuit of a desalination plant) the appellant will have an opportunity to pursue an allocation of such water and seek a permit for residential development.

Other broad challenges to the application and legality of the County's Growth Management Ordinance and CCSD Ordinances (i.e., contentions 12,14,17,25, and 30) are beyond the scope of the Commission's LCP jurisdiction. Whether or not the County's Growth Management Ordinance should be considered as part of the LCP (the issue raised by contention 12) is not, in this case, a substantial issue, because Public Works Policy 1 and CZLUO Section 23.04.021 provide adequate support the County's action. In other words, the argument that the County's Growth Management Ordinance is part of the LCP and an illegal taking is rendered moot by the fact that the County's action is appropriately justified by the terms of Public Works Policy 1 and CZLUO Section 23.04.021. Again, the Commission disagrees with the appellant's contention that the application of these LCP standards constitutes a taking of private property, for the reasons identified above.

With respect to the takings claim attributed to the County's processing the application as a new CCOC rather than a variance (contention 13), please refer to the procedures findings above. There is no evidence to support the allegation that the method for processing the application selected by the County was intended to deny, or has the effect of denying, the appellant's opportunity to pursue a takings claim.

Finally, arguments that application of the County's Growth Management Ordinance and Service District resolutions constitute a violation of equal protection requirements (Contentions 12,14, 17, and 25) are beyond the scope of this appeal and without merit. The CCSD's waiting list was closed in 1990 as a result of the lack of available service capacity. Since that time, the County has created a supplemental process for selecting development allocations if and when the necessary public services are available. This appears to a fair "first come, first serve" approach to allocating limited resources.

4. Conclusion

Contentions of the appeal that claim the County's action violates the appellant's constitutional rights do not raise a substantial issue regarding compliance with the LCP goal cited above. The applicant's inability to develop his property at this time is a result of the lack of adequate service capacities, not "over regulation". LCP standards requiring evidence of adequate services are essential to the protection of coastal resources (e.g., riparian habitats) and the public's health and welfare (e.g., water supply,



agriculture, fire protection). The County's action recognizes the applicant's ability to pursue a building permit once the availability of the necessary public services can be demonstrated. While this may be a significant constraint to development, it does not preclude development once sustainable sources of the public services can be identified and implemented. Moreover, this constraint was in effect, and a matter of public record, when the appellant acquired the property.⁵ Thus, the appeal fails to demonstrate that the appellant has been denied an economic use of his property based on a reasonable expectation.

D. Other Appeal Contentions

As noted above, many of the appellant's contentions do not provide valid grounds for appeal under Coastal Act Section 30603. In addition to the contentions so identified and addressed above, the following allegations fall beyond the scope of the Commission's coastal development permit appeal jurisdiction:

8. The requirements of the new CCOC, requiring the applicant to obtain water and sewer service from the CCSD, are more onerous than the terms of the 1989 CCOC, which, prior to the adoption of Title 26 by the County, could have been met by applying for placement on the allocation wait lists.

Response: The appellant's comparison of the new CCOC to the 1989 CCOC is not relevant to the question of whether the County's action on the new CCOC is consistent with the LCP.

11. The County Health Officer stated that he would not have approved the conditions pursuant to Section 21.03.010 if he had seen the CCSD's response to the project referral.

Response: This contention implies that the County Health Department no longer supports the condition it recommended to the Department of Planning and Building. This claim is not substantiated by the County record or relevant to the review of LCP compliance.

15. The State Division of Water Rights would not approve of the selling of wait list positions, and the transferring of water from other parcels, because the water permit for the CCSD is only an appropriative right to pump water owned by the State.

Response: The appellant's personal opinion of what the State Division of Water Rights might say about the selling of wait list positions is conjecture that is not relevant to the Commission's review of LCP compliance.

21. The limitations on water withdrawals established by coastal development permits issued to the CCSD by the Coastal Commission, and the restrictions on future development established by the LCP to address concerns regarding the adequacy of local water supplies, are inconsistent with the State of California Health and Safety Code requirements that public works facilities be designed to accommodate the existing project plan and buildout of the service area.

⁵ According to the County record, the restrictions on future development established by the terms of the 1989 CCOC were recorded on May 11, 1989. The appellant first obtained interest in the property on May 30, 1989.



Response: Alleged conflicts with the California Health and Safety Code is do not provide valid grounds for an appeal of a County action on a Coastal Development Permit pursuant to Section 30603 of the Coastal Act. The Commission notes that the time for challenging the limitations on future development of the appellant's property, established by the 1989 CCOC, is long past.

22. It is the fault of the County that the water and sewer system was designed poorly and cannot serve the areas eligible for urban services.

Response: Not an issue of LCP compliance.

24. The CCSD has not completed the three performance standards regarding further water withdrawals from Santa Rosa and San Simeon Creeks established by the suggested modifications to the North Coast Update adopted by the Commission in 1998, which were never accepted by the County.

Response: As acknowledged in the contention, San Luis Obispo County did not accept the modifications to the 1998 Update of the North Coast Area Plan Update. As a result, these modifications were not incorporated into the LCP, and do not provide a standard of review. Moreover, the requests of the applicant conflicts with the premise of these modifications.

